



U.S. DEPARTMENT OF
ENERGY

Energy Efficiency &
Renewable Energy

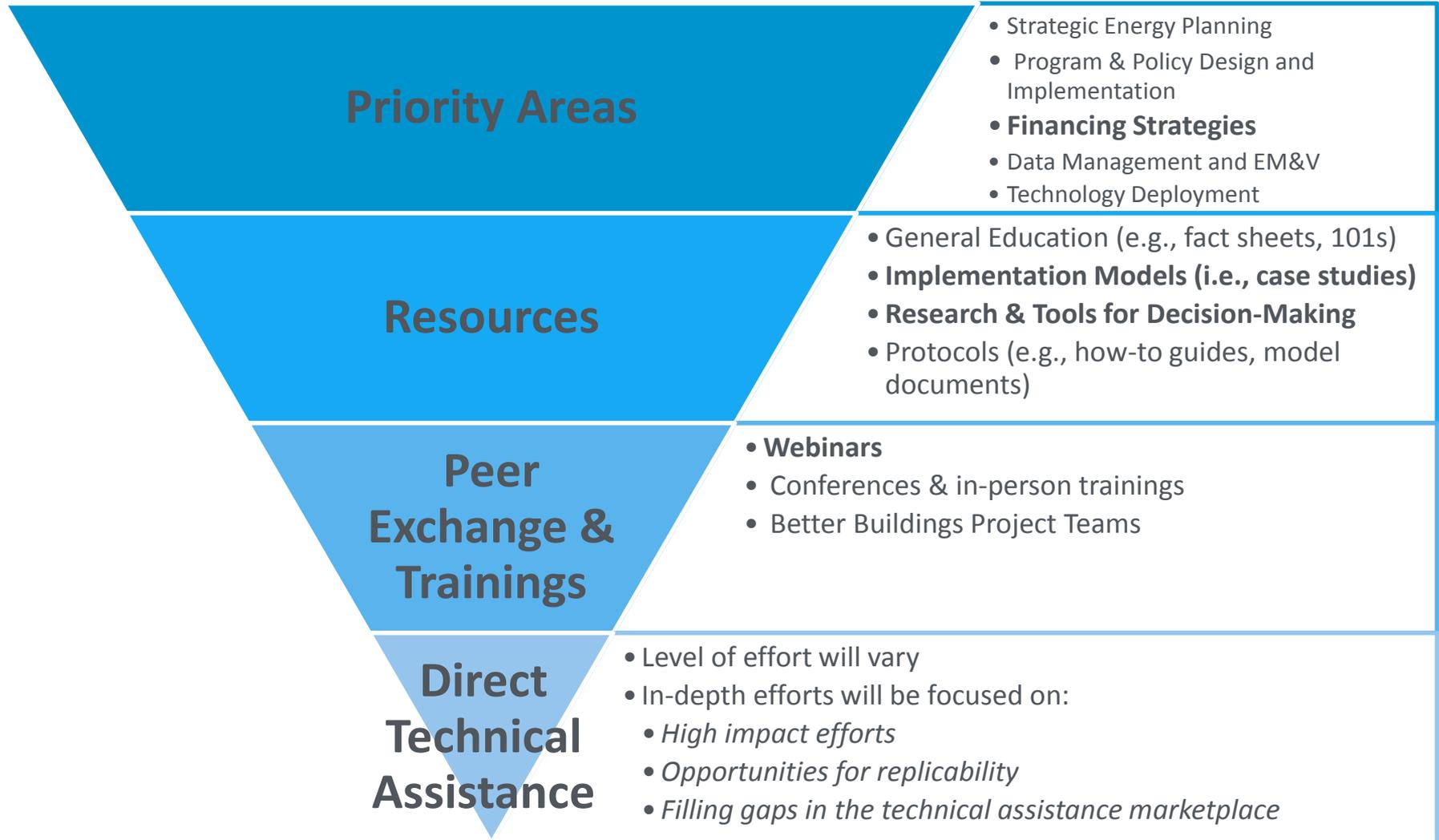


ESPC Resources

September 18, 2014

Nebiat Solomon
DOE's State and Local
Technical Assistance Team

DOE's State & Local Technical Assistance



Accessing State & Local Finance Offerings

- Resources – including the SEE Action on-bill report – can be accessed at the Solution Center Finance Portal
www.eere.energy.gov/wip/solutioncenter/financing.html
- Training and peer exchange opportunities – including our webinar archive – can be accessed on our Events page
www.eere.energy.gov/wip/solutioncenter/wip_events.html

Energy Savings Performance Contracting Model Documents

Chani Vines

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David Clamage

Rodney Vanderwall

Steve Truebner



Introduction

- Department of Energy (DOE) ESPC Model Document Evolution
 - American Recovery and Reinvestment Act
 - State led programs
 - ESPC projects
- Additional Resources
- Next Steps: A Continuous Process
 - Establishing a Feedback Loop

Documents Update

A Three-Phase Process

Linda Smith

President, 9Kft Strategies in Energy

(work was conducted under contract to Cadmus Group)



Documents:

Model Procurement and Contracting Documents for ESPC Programs and Projects

Procurement – 2 approaches

- Standard RFP
- Pre-qualification of ESCOs (by state program), with follow-up RFP (for clients to select finalist)

Contracting – 2 steps

- Investment Grade Audit
- Performance Contract

Financing

- RFP to competitively select a financing company
- Sample provisions to incorporate into a lease agreement

Attachments – where the rubber meets the road

- Approval forms
- Schedules to define the project (guarantee, warranties, roles & responsibilities, M&V, commissioning, maintenance, etc.)



Phase 1:

Is there a need for an updated set of model documents?

Establish the need

- Would an updated set of documents be useful?
- What should be changed?
- What should be added?
- Interviews with 12 state representatives

Response – YES!

- For new state programs (use as the core documents and modify as needed)
- For existing programs (use as a reference when updating documents)

Needs: refinement, organization, updates, incorporate resources from states



Phase 2: Engage Stakeholders

7 Focused Categories (consistency throughout all documents):

- Audit scope of work
- ESCO response to solicitations
- ESCO cost and pricing
- Guarantee and M&V
- Financing
- Project management
- Overall process

Stakeholders (over 35 public and private experts):

- State program representatives (state energy office program managers, state buildings departments)
- ESCO representatives (auditing specialists, project development specialists)
- ESPC financing company representatives
- With support from LBNL, ORNL and FEMP
- Non-profit organizations (RMI, PEI)



Phase 3: Expert and End-User Review

Intensive Reviews

- National Association of Energy Service Companies (NAESCO)
- Energy Services Coalition (ESC)
- State and local government end users

Focused Follow-Up from Phase 2

- ESCO Cost and Pricing

Putting It All Together – Integration, Cross-referencing, Streamlining, Refinements



Accomplishments

- Overall refinement
- Some simplification/streamlining
- Much expansion (filling the gaps)
- Integrated good resources from state and ESCO representatives
 - Life of Contract – documents management
 - Auditing reporting and proforma tables
 - Project management schedules
- Revised the audit scope of work
- Updated the financing RFP & developed standard lease provisions
- Revised the cost and pricing approach
- Confirmed that M&V segments are current
- Integrated LBNL/DOE eProject Builder approach for project data reporting
- Leads to standardization across states in core approaches (auditing, pricing, financing solicitation, and more)

Financing Documents

David Clamage

Founder and Managing Partner

Saulsbury Hill Financial



Primary Drivers

- Efficiency of Process
- Legal Standards
- Increased Liquidity
- Ease of Evaluation and Comparison

Primary Challenges

- 50 States – 50 Laws
- Different Issuers, i.e. Cities vs. Counties vs. Schools, etc.
 - Dodd Frank



Core Documents

Financing Solicitation (for use by a project owner or an ESCO on behalf of the owner)

Sample Provisions for the Lease Agreement (standard terms, definitions and conditions for a municipal Tax-Exempt Lease Purchase, TELP)

Pre-Qualification of Financing Firms – code of conduct



Dodd Frank & The Municipal Advisor Rule

Public Law 111–203
111th Congress

An Act

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

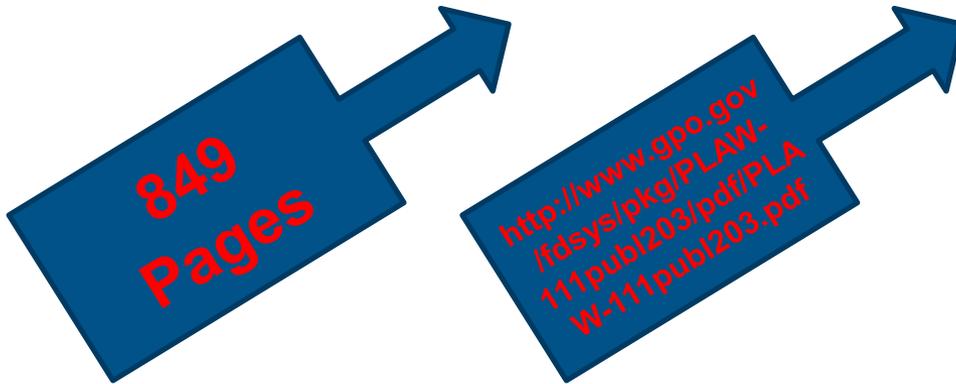
July 21, 2010
[H.R. 4173]

Dodd-Frank Wall Street Reform and Consumer Protection Act.
12 USC 5301 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.



Long title an Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Nicknames Dodd–Frank

Enacted by the 111th United States Congress

Effective July 21, 2010

Citations

Public Law Pub.L. 111–203 [§](#)

Statutes at Large 124 Stat. 1376 [§](#)–2223

Codification

Acts amended Commodity Exchange Act, Consumer Credit Protection Act, Federal Deposit Insurance Act, Federal Deposit Insurance Corporation Improvement Act of 1991, Federal Reserve Act, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, International Banking Act of 1978, **Protecting Tenants at Foreclosure Act**, Revised Statutes of the United States, Securities Exchange Act of 1934, Truth in Lending Act

Legislative history [§](#)

- **Introduced in the House** as “The Wall Street Reform and Consumer Protection Act of 2009” (H.R. 4173 [§](#)) by Barney Frank (D–MA) on December 2, 2009
- **Committee consideration** by **Financial Services**
- **Passed the House** on December 11, 2009 (223–202 [§](#))
- **Passed the Senate** with amendment on May 20, 2010 (59–39 [§](#))
- **Reported by the joint conference committee** on June 29, 2010; **agreed to by the House** on June 30, 2010 (237–192 [§](#)) and **by the Senate** on July 15, 2010 (80–39 [§](#))
- **Signed into law** by President Barack Obama on July 21, 2010



Dodd Frank & The Municipal Advisor Rule



MSRB Registration

Who Must Register

Brokers, dealers, municipal securities dealers (collectively dealers) and municipal advisors must register with the MSRB before engaging in municipal securities and advisory activities. The terms broker, dealer, municipal securities dealer and municipal advisor are defined in the Securities Exchange Act of 1934 in sections 3(a)(4), 3(a)(5), 3(a)(30) and section 15B(e)(4), respectively.



U.S. Securities and Exchange Commission

Municipal Advisor Registration - Form MA-T

Note: Form MA-T may only be filed through the Commission's website. It may not be filed in paper.

Note: In addition to municipal advisor registration with the SEC via Form MA-T, municipal advisors must also register with the Municipal Securities Rulemaking Board (MSRB). Information about MSRB registration is available at: <http://www.msrb.org/Rules-and-Interpretations/MSRB-Registration.aspx>.



Dodd Frank & The Municipal Advisor Rule

The following disclaimer is included in each financing solicitation document:

NOTE: IF FINANCE RFP IS ISSUED BY ESCO, ADD THE FOLLOWING LANGUAGE:

[ESCO NAME] DOES NOT ACT AS, NOR IS [ESCO NAME] COMPENSATED AS, A MUNICIPAL ADVISOR OR FIDUCIARY ACTING ON ITS BEHALF. ANY AND ALL FINANCIAL AND OTHER INFORMATION PROVIDED ABOUT OR RELATING TO SECURITIES OR OTHER FINANCIAL PRODUCTS IS PROVIDED FOR GENERAL INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS ADVICE, IS PROVIDED “AS-IS” WITHOUT WARRANTY OF ANY KIND (EXPRESS OR IMPLIED) AND WITHOUT ANY REPRESENTATION WITH RESPECT TO ACCURACY OR COMPLETENESS, AND MUST NOT BE RELIED UPON IN CONNECTION WITH ANY SECURITIES, INVESTMENT OR FINANCIAL DECISION OR OTHER ACTION/INACTION.

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Cost and Pricing in Solicitation Documents

Rodney Vanderwall
Manager, Energy Programs
Colorado Office of State Architect

Project Budget	Fees (1)	Costs (2)	Implementation Costs (3)	Profit Markup (4,5)	Project Price	Maximum Percent of Total Project Price (5)	Actual Percent of Total Project Price	Self-Performed by ESCO or Subcontracted	How final value derived
Pre-Construction Fees and Cost									
Design and Other Engineering	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		A/E Cost, In-House and/or Contracted - to Design/Specify Project
Pre-Construction Services	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		Construction Management and Project Development Services
Other Pre-Construction Costs	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		Site visits, Owner meetings, Legal review, Accounting services
Construction Fees and Costs									
Trade Subcontractors (Contractor Costs to ESCO)	N/A	\$ -	\$ -	\$ -	\$ -	N/A	N/A	N/A	N/A
Design-Build Subcontractors	N/A	\$ -	\$ -	\$ -	\$ -	N/A	N/A	N/A	N/A
Direct Purchase Equipment	N/A	\$ -	\$ -	\$ -	\$ -	N/A	N/A	N/A	N/A
Construction Management	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		On-Site Construction Manager/Superintendent
Project Engineering	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		Design Engineer Inspections; Engineering Analysis
General Conditions	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		Miscellaneous costs; Equipment Rentals, Security Fencing, etc
Construction Completion	\$ -	\$ -	\$ -	\$ -	\$ -		#DIV/0!		CX, Training, Construction M&V, O&M Manuals, Permits, Insurance
Subtotals	\$ -	\$ -	\$ -	\$ -	\$ -				



Other Fees									
Investment Grade Audit and Project Proposal	\$ -				\$ -	N/A	N/A		N/A
Contingency	\$ -				\$ -		#DIV/0!		
TOTAL PROJECT PRICE					\$ -				

ESCO Qualifications in Solicitation Documents

Steve Truebner

Public Sector Solutions

Philips Lighting

(work was conducted while a Business Development Manager with McKinstry, an ESCO)



Objectives

- Apply best practices from both the State Energy Office and ESCO perspective
- Reflect trends and changes in ESCO marketplace
- Streamline submittal; Quality pages, not quantity
- Enhance documentation sections, to validate expertise



Notable Outcomes

- Open-ended 3 page company introduction
- Flexibility on market sector narrative
- Truncated past project list; deeper project reference list
- Technical section allows ESCO to highlight strengths
- Site specific narrative for project selection RFP
- Increased use of tables for easy analysis for State Energy Office review

Using the Documents

Model Resource

- Use as a starting point to craft new documents for a new or revitalized program
- Use as a resource when updating your documents
- Adopt elements for existing programs

New cost/pricing segment	New project management schedules
New ESCO response segment	eProject Builder data requirement
Life of Contract – documents management	Refined audit scope of work
Approval and audit process forms	Financing RFP....and more

- Make recommendations to DOE on further improvements

Make Them Your Own!

- Incorporate statute requirements
- Legal review (pre-approval of contract documents)
- Purchasing review (buy-in for the procurement process)
- What works for you – your program, your state, your clientele, your ideas to make them better



Next Steps

- Documents will be posted on the State & Local Solution Center ESPC page:

http://www1.eere.energy.gov/wip/solutioncenter/performance_contracting.html

- Continuous updating as needed
 - Your feedback is critical

Thank you!

**For more information,
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